

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I)	NOTICE OF PUBLIC HEARING
and amendment of ARM 37.37.101,)	ON PROPOSED ADOPTION
37.86.2207, 37.88.907, and 37.88.1133)	AND AMENDMENT
pertaining to implementation of a)	
Children's Mental Health Direct Care)	
Worker Wage Increase)	
)	

TO: All Interested Persons

1. On April 26, 2006, at 3:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be adopted provides as follows:

RULE 1 DIRECT CARE WAGE ADD-ON FOR CERTAIN MENTAL HEALTH CARE PROVIDERS (1) Subject to the provisions of this rule, only the providers listed in this rule will be eligible to receive additional reimbursement for wage and benefit improvements for direct care workers. The additional reimbursement will be paid as an add-on to the computed Medicaid payment rate and must be used only for wage and benefit increases to direct care workers as that term is defined at ARM 37.37.101. Eligible providers are:

(a) mental health centers providing community based psychiatric rehabilitation services (CBPRS);

(b) therapeutic group homes;

(c) residential treatment centers; and

(d) therapeutic family care providers.

(2) To receive a direct care add-on, a provider must submit a request for funding to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) For state fiscal year 2006, the department will allocate a total of

\$142,257.00 per month to fund the direct care add-on. The department will determine a maximum monthly payment for each qualified provider as a pro rata share of the allocated funds taking into account the census of direct care full-time equivalents (FTE), based on a 40-hour week, employed on September 30, 2005 as identified by each qualified provider.

(4) Effective July 1, 2006, the department will evaluate the remaining appropriation and determine the maximum monthly payments as a pro rata share based on the 21-month period from October 1, 2005 through June 30, 2007, taking into account:

(a) the census of direct care worker full-time equivalents (FTE), based on a 40-hour week, employed on September 30, 2005 as identified by each qualified provider;

(b) the ratio of Montana Medicaid youths served by the provider during the month of September 2005 to the total of youths served during the same period by the same provider;

(c) the total adjusted number of direct care worker FTEs employed on September 30, 2005 as reported by all qualified providers; and

(d) the individual provider's portion of the total adjusted direct care worker FTE wages on September 30, 2005.

(5) The direct care add-on amount will be paid in addition to the published Medicaid rate that is established for each service.

(6) No adjustments will be made in the payment amount to account for subsequent changes or adjustments in utilization data or for any other purpose, except that amounts paid are subject to recovery if the facility fails to maintain the required records or to spend the funds in the manner specified in the request for funding.

(7) To receive the separate per hour add-on, each provider must enter into a written agreement with the department and be in compliance with the agreement.

(8) A provider that is not qualified as of September 30, 2005 will not be eligible for a direct care worker add-on in the 21-month period from October 1, 2005 through June 30, 2007.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.37.101 THERAPEUTIC YOUTH GROUP HOMES, DEFINITIONS

~~(4)~~ (8) "Therapeutic youth group home" ~~is~~ means a youth care facility licensed by and under contract with the department as a therapeutic youth group home, in which staff who are trained to provide services to emotionally disturbed youth in a therapeutic environment, perform assessments, develop and implement planned treatment interventions designed to address a youth's therapeutic needs in accordance with an individualized written treatment plan, and provide group, individual, and family therapy. Providers of moderate, campus based, and intensive therapeutic youth group home services must directly employ or contract for services

of clinicians, program managers, child care staff, relief staff, and administrative staff.

~~(2)~~ (1) "Basic level" means the supervision and intensity of treatment classified under ARM 37.50.315 as supervision matrix level VI.

~~(3)~~ (6) "Moderate level" means the supervision and intensity of treatment required in a therapeutic youth group home as specified in ARM 37.37.108 to manage and treat children who present emotional and/or behavioral disorders as determined by the department. Therapeutic interventions such as individual and group therapy are provided several times per week. In addition to the treatment, the children are provided with 24-hour awake staff supervision.

~~(4)~~ (2) "Campus based" means the supervision and intensity of treatment required in a therapeutic youth group home as specified in ARM 37.37.111 to manage and treat children who present severe emotional and/or behavioral disorders as determined by the department. Treatment, therapeutic interventions, and supervision are tailored to the age and diagnosis of the children served. Therapeutic interventions are individualized and are provided several times per day. Campus based level care is provided on a campus where treatment is provided throughout the ~~milieu~~ facility. In addition to treatment, the children are provided with 24-hour awake staff supervision.

(3) "Direct care worker" means a Medicaid provider or an employee who is assigned to work directly with the youth or in youth-specific activities for no less than 75% of their hours of employment. A direct care worker is primarily responsible for the implementation of the treatment goals of the youth.

~~(5)~~ (4) "Intensive level" means the supervision and intensity of treatment required in a therapeutic youth group home as specified in ARM 37.37.115 to manage and treat children who present severe emotional and/or behavioral disorders as determined by the department. Treatment, therapeutic interventions, and supervision are tailored to the age and diagnosis of the children served. Therapeutic group and individual interventions are provided several times per day. In addition, specialized behavior management techniques are incorporated into the treatment and supervision of children requiring intensive level services. The children are provided with 24-hour awake supervision.

~~(6)~~ (5) "Lead clinical staff (LCS)" is means an employee of, or under contract with, the moderate, campus based or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home(s). The LCS must be a clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a masters degree in a human services field with a minimum of one year of clinical experience.

(7) "Program manager" is means an employee of the moderate, campus based, or intensive level therapeutic youth group home provider who trains and supervises child care staff, and provides treatment under the clinical supervision of the LCS. Program managers must have a bachelor's degree in a human services field, or the experience or a combination of experience and education, equivalent to a bachelor's degree. Human services experience equivalent to a bachelor's degree for a non-degree program manager is ~~6~~ six years. Each year of post-secondary education in human services for a non-degree program manager equals one year of experience.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, 52-2-622, MCA
IMP: 41-3-1102, 41-3-1142, 52-2-111, 52-2-622, MCA

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (1)(d) remain the same.

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT ~~Fee~~ Schedule. The department adopts and incorporates by reference the department's EPSDT ~~Fee~~ Schedule dated July 2003. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~Children's Mental Health Bureau~~ Managed Care Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) remains the same.

(4) Reimbursement for the therapeutic portion of therapeutic family care treatment services is the lesser of:

(a) the amount specified in the department's ~~medicaid mental health fee schedule~~ Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in (3)(a) and a direct care wage add-on as provided in [RULE I], if applicable; or

(b) through (9) remain the same.

(10) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the ~~matrix of services excluded from simultaneous reimbursement~~ Medicaid Children's Mental Health Plan and Children's Mental Health Services Plan (CHMSP) Services Excluded from Simultaneous Reimbursement dated ~~January 1, 2003~~ September 1, 2005. A copy of the ~~MH (Mental Health) simultaneous Reimbursement Exclusions matrix~~ CHMSP Services Excluded from Simultaneous Reimbursement is posted on the internet at the department's home page at www.dphhs.mt.gov/aboutus/divisions/addictivementaldisorders/services/index.shtml ~~www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf~~ or may be obtained by writing the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(11) Information regarding current reimbursement or copies of fee schedules for EPSDT services may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~Children's Mental Health Bureau~~ Managed Care Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.88.907 MENTAL HEALTH CENTER SERVICES, REIMBURSEMENT

(1) Medicaid reimbursement for mental health center services shall be the

lowest of:

- (a) the provider's actual (submitted) charge for the service; or
 - (b) for services provided to adults, the department's Medicaid fee for the service as specified in the department's Medicaid Mental Health Fee Schedule, Medicaid Mental Health and Mental Health Services Plan Individuals 18 Years of Age and Older Fee Schedule; or
 - (c) for services provided to children and adolescents, the Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207 for services provided to youths as that term is defined at ARM 37.89.103, and a direct care wage add-on as provided in [RULE I], if applicable.
- (2) through (3)(d) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.88.1133 RESIDENTIAL TREATMENT CENTERS, REIMBURSEMENT

~~(1) The rate provided in the department's mental health fee schedule for residential treatment facility providers located in the state of Montana is the final rate, and such rate will not be adjusted retrospectively based upon more recent cost data or inflation estimates. Cost settlements will not be performed.~~

(1) The final rate for services provided to youths as that term is defined at ARM 37.89.103 for residential treatment facility providers located in the state of Montana is:

(a) the rate provided in the department's Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207; and

(b) a direct care wage add-on as provided for in [RULE I], if applicable.

(2) The rate in (1) will not be adjusted retrospectively based upon more recent cost data or inflation estimates. Cost settlements will not be performed.

(2) through (9) remain the same but are renumbered (3) through (10).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The Department of Public Health and Human Services (the department) is proposing the adoption of Rule I, "Separate per Hour Add-On for Certain Mental Health Care Providers" and the amendment of ARM 37.37.101, "Therapeutic Youth Group Homes, Definitions", 37.86.2207, "Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT), Reimbursement", 37.88.907, "Mental Health Center Services, Reimbursement", and 37.88.1133, "Residential Treatment Centers, Reimbursement". This proposal is necessary to implement a supplemental Medicaid payment that will allow certain providers to increase wages and benefits for direct care workers providing Medicaid children's mental health services. The Montana Legislature appropriated \$2,987,368 to the department in the 2005 General Appropriations Act (2005 Laws of Montana, Chapter 607), commonly referred to as "House Bill 2" (HB 2) with explicit restrictions requiring that it must be used during

the 2006-2007 biennium only for the purpose of increasing wages and benefits for direct care workers. Rules are necessary to define the term "direct care worker," to adopt a methodology for distribution of the appropriation and to establish procedures and procedural requirements for administration of the distributions.

Generally, the proposed changes include: 1) a new rule to regulate the payment of direct care add-on reimbursements, 2) a definition of direct care worker, 3) revising the citations to fee schedules referred to in the rules, and 4) updating references to the names of administrative units in the department. If these changes are not adopted, the department would have no authority to distribute the appropriation because existing Medicaid reimbursement rules do not contain a provision for the add-on.

The specific rationale for each proposed change follows.

RULE I

This proposed new rule would specify the categories of provider eligible to receive the add-on, the methodology for computing the add-on amount, and the terms and conditions an eligible provider must comply with. The department is proposing that payments to Montana Medicaid children's mental health service providers, who meet certain conditions, be distributed as a monthly add-on to their Medicaid reimbursement rate. The add-on payment may be used only for wage and benefit increases for direct care workers. The department will enter into agreements with eligible providers to gather and report data documenting increases in direct care worker wages and benefits resulting from the add-on payments.

The department would determine a maximum monthly payment for each qualified provider, commencing October 1, 2005, as a pro rata share of the appropriated funds allocated for increases in Medicaid direct care wages and benefits. This determination would be effective for the entire 21-month period beginning October 1, 2005 and ending June 30, 2007. Effective July 1, 2006, the department would evaluate the remaining appropriation and determine the maximum monthly payments as a pro rata share based on the wage information provided by qualified providers as of September 30, 2005. No "new" qualified providers will be added after September 30, 2005.

In HB2, the 2005 Legislature made a restricted, biennial appropriation for \$2,987,368 to improve wages and benefits for children's mental health direct care workers in fiscal years 2006 and 2007. It must be used only for a wage increase for children's mental health direct care workers. HB2 states that the legislature intended that direct care salaries be raised 75 cents an hour and that benefits for direct care workers be raised 26 cents an hour. Because the legislature specified the reimbursement amount, the purposes of the appropriation, and restricted the appropriation to those purposes, no other options were open to consideration by the department.

The department is required by HB 2 to document that the appropriation was used solely for direct care worker wage and benefit increases. The documentation must include the initial wage rates and wage rates after the increase has been applied. The department proposes to collect the information necessary to document the wage increases through agreements with providers.

Providers eligible for a direct care add-on payment would be limited to :

- (a) mental health centers providing community based psychiatric rehabilitation services (CBPRS);
- (b) therapeutic group homes;
- (c) residential treatment centers; and
- (d) therapeutic family care providers.

The department chose these providers because they are the only Medicaid providers who have employees meeting the definition of "direct care worker" proposed by the department, and because they have had difficulty recruiting and retaining employees. For further discussion, see the explanation for ARM 37.37.101.

The department interprets the legislature's goal of increasing direct care worker's wages \$0.75 an hour and benefits \$0.26 an hour as applying only to the portion of time they spend on Medicaid activities. This interpretation is necessary because the legislative appropriation for direct care worker wage and benefit increases contains state special revenue funds and Medicaid federal financial participation.

ARM 37.37.101

The department proposes adding a definition of "direct care worker" to the definitions and renumbering them so they will appear in alphabetical order as required by the Secretary of State's formatting requirements. The department proposes to define direct care workers as employees who spend no less than 75% of their work hours working directly with youth or in youth specific activities. The department suggests a 75% minimum because it would provide a reasonable allowance for training and administrative tasks.

The proposed definition is necessary because the legislature identified workers eligible for the wage and benefit increases only as "direct care workers". HB 2 did not define the term "direct care", it does not specify the kind of work done by a direct care worker and it does not specify a minimum amount of time a worker must spend providing care to children receiving Medicaid mental health services.

The definition proposed by the department was chosen so the wage and benefit increases would go to the lowest paid mental health workers. Those workers should be favored because their positions are the most difficult to recruit and retain. The proposed wage and benefit increases are necessary for children's mental health care providers to compete for workers with retailers and medical service providers.

ARM 37.86.2207

The proposed amendment to this reimbursement rule would refer to Rule I, thereby incorporating the direct care wage add-on. This proposed amendment would implement the direct care wage add-on for providers of certain mental health care services. The necessity for these amendments is explained in the discussion of Rule I above. The department is taking this opportunity to conform the format of the rule to current rulemaking standards.

The department is also taking this opportunity to update its address to reflect a recent reorganization of the division responsible for administering Medicaid outpatient chemical dependency treatment, nutrition, and private duty nursing programs in Montana. This proposal is for administrative purposes and no substantive change is intended by the department.

ARM 37.88.907 and 37.88.1133

The proposed amendments in these rules would add references to the direct care wage add-on provided for in Rule I. These proposed amendments would implement the direct care wage add-on established in Rule I for the therapeutic portion of therapeutic youth group home treatment services, mental health center services, and residential treatment center services. The necessity for these amendments is included in the discussion of Rule I above.

Fiscal Impact

The department expects the effect of the direct care wage add-on to equal \$2,987,368, the amount appropriated for the State Fiscal Year 2006-2007 biennium for direct care wage and benefit increases. Of that amount, approximately \$2 million is federal funding and about \$900,000 is state funding.

Persons affected

This proposal would affect 18 children's mental health providers and approximately 719 direct care workers providing children's mental health services to Medicaid recipients.

5. The department intends to apply the direct care wage add-on retroactive to October 1, 2005. There is no negative impact to providers or employees if these rules are applied retroactively to the dates proposed by the department. There would be a negative impact if they were not applied retroactively.

This rule proposal reflects the implementation plan negotiated with the qualified providers so that the monthly payments could begin October 1, 2005. The department concentrated on implementation and worked closely with the providers to develop the details proposed in this notice. This resulted in the need to make the

proposed changes retroactive.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 4, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State March 27, 2006.